HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Wednesday, May 17, 2017
85th Legislature, Number 73
The House convenes at 2:30 p.m.

Fourteen bills are on the daily calendar for second-reading consideration today. They are listed on the following page.

Dwayne Bohac
Chairman
85(R) - 73

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Wednesday, May 17, 2017
85th Legislature, Number 73

SUBJECT: Continuing the Texas Board of Chiropractic Examiners

COMMITTEE: Public Health — favorable, without amendment

VOTE: 8 ayes — Price, Arévalo, Coleman, Collier, Cortez, Guerra, Klick, Oliverson

0 nays

2 absent — Burkett, Zedler

1 present not voting — Sheffield

SENATE VOTE: On final passage, April 5 — 30-0

WITNESSES: For — William Morgan and Robert Rosenbaum, Parker University; Devin Pettiet and Todd Whitehead, Texas Chiropractic Association; Sheila Hemphill, Texas Right To Know; (*Registered, but did not testify*: Coleman Hemphill, Texas Right to Know; Jerome Young; Virginia Young)

Against — None

On — Carissa Nash, Sunset Advisory Commission; (*Registered, but did not testify*: Patricia Gilbert, Texas Board of Chiropractic Examiners)

BACKGROUND: The Texas Board of Chiropractic Examiners was created in 1949 by the 51st Legislature to examine and license chiropractors in the state.

Functions. The mission of the board is to protect the health, safety, and welfare of the people of Texas by licensing chiropractors, registering chiropractic facilities, and enforcing the Texas Chiropractic Act (Occupations Code, ch. 201) and board rules.

Governing structure. The board is composed of nine members, including six chiropractors and three members of the public, all appointed by the governor. Members serve six-year terms and are limited to two terms.

Funding. The total expenditures of the board in fiscal 2015 totaled $768,485. Most board funding comes from general revenue, with 6 percent coming from certain appropriated receipts. The agency generates revenue through fees paid by chiropractors, facility owners, radiological technicians, and continuing education providers.

Staffing. The Texas Board of Chiropractic Examiners employed 14 staff in fiscal 2015, most of whom work in Austin with one investigator each in Dallas and Houston.

The Texas Board of Chiropractic Examiners is subject to the Texas Sunset Act and, unless continued, will be abolished September 1, 2017.

DIGEST:

SB 304 would continue the Texas Board of Chiropractic Examiners until September 1, 2029. The bill also would adopt certain recommendations from the Sunset Advisory Commission.

Investigative process. Complaints, adverse reports, and all investigative information received by the Texas Board of Chiropractic Examiners relating to a chiropractic license holder, license application, or criminal investigation would be privileged and confidential. The board would be required to protect the identity of a complainant to the extent possible.

The bill would prohibit the board from accepting anonymous complaints. A complaint filed by an insurance agent, insurer, pharmaceutical company, or third-party administrator against a license holder would have to include the name and address of the person filing the complaint. The board would have to notify the license holder who was the subject of a complaint of the name and address of the individual within 15 days of the filing date unless the notice would jeopardize an investigation.

Expert review process. The Texas Board of Chiropractic Examiners would be required to adopt rules to develop an expert review process to assist with the investigation of complaints requiring additional chiropractic expertise by March 1, 2018. The board would determine the type of complaints requiring expert review, create a list of qualified experts, and establish a method for assigning experts to a complaint that

ensured unbiased assignments, maintained confidentiality, and avoided conflicts of interest.

Board rules would address qualifications of experts, grounds for removal of an expert, complaint resolution time frames, and the content and format of expert review documents.

Criminal history record information. The board would require applicants for a new or renewed chiropractic license to submit a complete and legible set of fingerprints for the purpose of obtaining criminal history record information from the Department of Public Safety (DPS) and the Federal Bureau of Investigation by September 1, 2019. The board could not issue a license to an individual who did not comply with fingerprinting requirements. A license holder would not have to submit fingerprints for a renewed license if the license holder had done so previously for the initial license or a prior license renewal.

The bill would allow the board to enter into an agreement with DPS to administer a criminal history record information check and authorize DPS to collect from an applicant any costs incurred in conducting the check. The board also would establish a process to search at least one national practitioner database to determine whether another state had taken disciplinary action against an applicant or license holder.

The board could refuse to admit an individual to an examination, revoke or suspend a license, or place a license holder on probation for failing to submit fingerprints or for violating a statute or rule of this or another state.

Training program. The bill would expand the training program required for members of the board to include information regarding the scope and limitation of the board's rulemaking authority and the types of board rules, interpretations, and enforcement actions that could implicate federal antitrust law. The executive director of the board would be required to create a training manual and distribute the manual to each board member annually.

A board member who had not completed the additional training required in the bill could not vote, deliberate, or be counted as a member in

attendance at a meeting of the board held on or after December 1, 2017, until the board member had completed the additional training.

Peer review and facility registration. The bill would repeal Occupations Code, ch. 201, subch. F, which currently authorizes the board to appoint local chiropractic peer review committees to evaluate chiropractic treatment and services in disputes involving a chiropractor and patient.

The bill also would repeal Occupations Code, sec. 201.312, which currently requires chiropractic facilities to be registered with the board before they can operate.

Chiropractic licenses. The bill would remove the requirement that a chiropractic license applicant be of good moral character, as well as the requirement that an applicant pass the examination within three attempts.

A license to practice chiropractic could be valid for a term of one or two years, as determined by board rule.

The bill would specify that licensed chiropractors could diagnose the biomechanical condition of the spine and musculoskeletal system of the human body.

Fees. The bill would repeal a provision prohibiting the board from reducing the fees collected to cover the costs of the Texas Board of Chiropractic Examiners to be less than the fee amount set on September 1, 1993.

Effective date. The bill would take effect September 1, 2017.

SUPPORTERS SAY:

SB 304 appropriately would continue the Texas Board of Chiropractic Examiners and adopt important Sunset Advisory Commission recommendations to improve certain ineffective enforcement procedures. Currently, the board does not resolve complaints in a timely manner and does not conduct background checks on the majority of chiropractic license applicants. The bill would solve these problems by amending the investigative process, developing expert review procedures, and requiring fingerprinting for applicants.

The bill would expand the information considered confidential to include complaints relating to a license holder, adverse reports, and other investigative information, which would help ensure the safety of the complainant's identity. The board could not accept anonymous complaints, so concerns that market competitors would submit frivolous complaints are unfounded.

The bill also would remove certain administrative functions that do not add to public safety, such as the facility registration requirement and the peer review process.

Further, the bill would clarify that licensed chiropractors had the ability to diagnose the biomechanical condition of the spine and musculoskeletal system, clearing up a source of costly litigation.

OPPONENTS SAY:

SB 304 would adopt certain problematic Sunset recommendations for the Texas Board of Chiropractic Examiners, including a provision making any complaints against a chiropractor confidential to the furthest extent possible. This level of confidentiality could encourage a chiropractor's competitors to file spurious complaints with the board, creating an unnecessary and inappropriate administrative burden for the board and the chiropractor's business.

The repeal of required facility registration also would be a concern because it could put patients at risk. Dangerous situations can stem from a chiropractic facility itself or a non-licensed owner. Without facility registration, there would be no oversight of office procedures, marketing, or billing.

The bill should not expand the Texas Chiropractic Act to allow chiropractors to diagnose medical conditions because they are not qualified to diagnose certain diseases or other serious conditions.

NOTES:

According to the Legislative Budget Board's fiscal note, the bill would have an estimated negative impact of $600,000 through fiscal 2018-19, and $300,000 each year afterwards.

SUBJECT: Continuing the Texas State Board of Dental Examiners

COMMITTEE: Public Health — favorable, without amendment

VOTE: 9 ayes — Price, Sheffield, Arévalo, Coleman, Collier, Cortez, Guerra, Klick, Oliverson

0 nays

2 absent — Burkett, Zedler

SENATE VOTE: On final passage, April 11 — 31-0

WITNESSES: For —Marc Worob, Texas Academy of General Dentistry; Matt Roberts, Texas Dental Association; Brian Stone and Kelly Shy, Texas Society of Oral and Maxillofacial Surgeons; Charles Rader, Texas Society of Periodontists; David Reeves; (*Registered, but did not testify*: Steve Bresnen, Association of Dental Support Organizations; Mackenna Wehmeyer, Career Colleges and Schools of Texas; David Mintz, Texas Academy of General Dentistry; Brandy Loving, Texas Academy of Pediatric Dentistry; Amanda Richardson, Texas Dental Hygienists' Association; Jaime Capelo, Texas Periodontist Society, Texas Society of Dentist Anesthesiologists; Michelle Wittenburg, Texas Society of Anesthesiologists)

Against — None

On —Julie Davis and Sarah Kirkle, Sunset Advisory Commission; Kelly Parker, Texas State Board of Dental Examiners; Steve Austin

BACKGROUND: The Texas State Board of Dental Examiners (TSBDE) has regulated dental care in Texas since its creation in 1897. The board's mission is ensuring high quality and safe dental care.

Functions. TSBDE's responsibilities include:

- licensing dentists and dental hygienists;

- registering dental assistants, laboratories, and mobile dental facilities;
- enforcing the Dental Practice Act and board rules by investigating complaints against licensees and registrants and taking disciplinary action against violators;
- monitoring compliance of disciplined licensees and registrants; and
- providing a peer assistance program for licensees and registrants who are impaired.

Governing structure. TSBDE is governed by 15 governor-appointed members, including eight dentists, two dental hygienists, and five members who represent the public. Two statutorily created advisory committees, the Dental Hygiene Advisory Committee and the Dental Laboratory Certification Council, assist the board.

Funding. In fiscal 2015, the board had a budget of $4.2 million, with 93 percent of its funding from general revenue and the remainder from appropriated receipts. Revenue from fees paid by dentists, dental hygienists, dental assistants, and other entities regulated by the board is deposited in the state's General Revenue Fund and covers the board's operating costs. In fiscal 2015, the board generated revenue of $11.8 million, including about $3 million from the professional fee paid by dentists directly to the General Revenue Fund and the Foundation School Fund. The Legislature discontinued the professional fee in 2015, but the board is still expected to bring in almost $3.8 million more in operating fees in fiscal 2016 than budgeted to run the agency and pay for employee benefits, according to the Sunset Advisory Commission.

Staffing. The board had 58 authorized positions at the end of fiscal year 2015 and actually employed 55 individuals, the majority of whom work in the central office in Austin. Sixteen investigators and inspectors work in field offices across Texas.

Expiration date. Unless continued by the Legislature, TSBDE would be abolished on September 1, 2017.

DIGEST:

SB 313 would continue the Texas State Board of Dental Examiners (TSBDE) until September 1, 2029. The bill also would change TSBDE

board composition and board training requirements, discontinue certain certificates for dental assistants, change dental assistant training requirements, eliminate an advisory committee and a council, regulate anesthesia by dentists, create an advisory committee for anesthesia-related deaths, and make other changes to procedures and licensing at TSBDE.

Board composition. The bill would change the composition of the board to 11 members from 15 and would terminate the terms of any TSBDE board members serving on September 1, 2017. Under the bill, the board would consist of six dentist members, three dental hygienist members, and two public members. In addition to existing prohibitions on board membership, the bill would prohibit a person from being a member of the board or a board employee employed in a bona fide executive, administrative, or professional capacity if:

- the person was an officer, employee, or paid consultant of a Texas trade association in the field of health care; or
- the person's spouse was an officer, manager, or paid consultant of a Texas trade association in the field of health care.

Board training. In addition to existing training requirements for board members, the bill would require the board training program to provide a member with information regarding the scope of and limitations on the board's rulemaking authority and the types of board rules, interpretations, and enforcement actions that could implicate federal antitrust law by limiting competition or impacting prices charged by those engaged in a profession or business regulated by the board. The bill would specify that these rules, interpretations, and enforcement actions would include those that:

- regulate the scope of practice of persons in a profession or business the board regulates;
- restrict advertising by those in a profession or business the board regulates;
- affect the price of goods or services provided by those in a profession or business the board regulates; and
- restrict participation in a profession or business the board regulates.

The bill also would require training on disclosure of conflicts and other laws applicable to members of the board in performing their duties. The TSBDE executive director would be required to create and distribute a training manual that included the board's training information as specified by the bill. Board members would be required to sign a statement acknowledging receipt of the manual from the executive director.

Complaints and out-of-state disciplinary actions. The bill would prohibit TSBDE from accepting anonymous complaints, meaning complaints that lack sufficient information to identify the source or the name of the person who filed the complaint. If it did not violate the confidentiality requirements under the Texas Public Information Act, the bill would require a complaint filed by an insurance agent, insurance company or an insurer, pharmaceutical company, or third-party administrator to include the name and address of the person filing the complaint. Within 15 days of a complaint being filed, TSBDE would be required to notify the license holder who was the subject of the complaint with the identifying information of the person who filed the complaint, unless the notice would jeopardize an investigation.

The bill would allow the board to adopt rules and procedures to periodically review reports of disciplinary actions taken against a license holder by another state that would constitute grounds for TSBDE disciplinary action.

Licensing and continuing education. The bill would remove language requiring a dentist license applicant or dental hygienist applicant to be "of good moral character." The bill would specify that dentistry licenses would be valid for one or two years, as determined by TSBDE rule. The bill would allow TSBDE to refuse to renew a license if the license holder had violated a board order.

The bill would remove the existing requirement for dentists and dental hygienists to complete at least 12 hours of continuing education and would instead allow TSBDE to adopt rules to set the number of required continuing education hours. The bill would direct TSBDE to establish continuing education requirements for dental assistants, including a

minimum number of hours to renew a registration.

Anesthesia. The bill would define the terms "high-risk patient" as a patient who had a level 3 or 4 classification according to the American Society of Anesthesiologists Physical Status Classification System and "pediatric patient" as a patient younger than 13 years old. The bill would authorize TSBDE by rule to establish minimum standards for anesthesia, rather than only enteral anesthesia. The rules would be related to different levels of permits held by a dentist and would require minimum components to be included in a preoperative checklist to be used before a patient received anesthesia. The checklist would be included in the patient's dental record.

The bill would prohibit dentists from administering anesthesia unless they had a relevant permit issued by TSBDE. The board would be required to issue permits for administering anesthesia in five categories:

- nitrous oxide;
- level 1: minimal sedation;
- level 2: moderate sedation (enteral administration);
- level 3: moderate sedation (parenteral administration); and
- level 4: deep sedation or general anesthesia.

The board could charge a fee for issuing the permit. In setting the qualifications for each permit, the bill would direct TSBDE to require those applying for a level 2, 3, or 4 permit to complete training on pre-procedural patient evaluation, the continuous monitoring of a patient's level of sedation during anesthesia, and the management of emergency situations. An applicant also would have to indicate whether the dentist provided or would provide anesthesia in more than one location.

The bill would require TSBDE to adopt rules to establish minimum emergency preparedness standards and requirements for administering anesthesia under a permit, as specified in the bill. A permit holder also would be required to establish emergency preparedness protocols that conformed with board rules and to have an emergency management plan specific to each practice setting where the permit holder would administer

anesthesia.

The bill would require a permit holder, once every five years, to pass an online jurisprudence examination developed by TSBDE that would cover board rules and state law related to administering anesthesia. A level 2, 3, or 4 permit holder also would be required to obtain authorization from the board and demonstrate advanced didactic and clinical training to the board before administering anesthesia to a pediatric or high-risk patient. The board could set further limitations on administering anesthesia to a pediatric or high-risk patient. A permit holder who was administering level 4 anesthesia would be required to use capnography to monitor the patient while administering the anesthesia.

The bill would allow TSBDE to inspect a dentist who applied for or held an anesthesia permit and would require inspections for dentists who held a level 2, 3, or 4 permit. Dentists who administered anesthesia exclusively in a state-licensed hospital or ambulatory surgical center would be exempt. The board would be required to adopt a risk-based inspection policy that would take into consideration previous anesthesia-related disciplinary actions against a permit holder when determining whether an inspection was necessary. Inspections could be made without notice and would begin by September 1, 2022.

Advisory committee for anesthesia-related deaths or incidents. The bill would direct TSBDE to establish an advisory committee to analyze and report on data and associated trends concerning anesthesia-related deaths or incidents. The advisory committee would include a general dentist, a dentist anesthesiologist, an oral and maxillofacial surgeon, a pediatric dentist, a physician anesthesiologist, and a periodontist. A member of TSBDE could not also be an advisory committee member. TSBDE could accept gifts and grants to fund the duties of the board and the advisory committee related to anesthesia-related deaths or incident analysis.

The bill would specify advisory committee member terms, requirements, and how the committee would function. Among these requirements, the bill would require TSBDE to post on its website any recommendations or findings from the advisory committee. The bill would allow TSBDE to

provide the advisory committee with de-identified investigative files for review. Information pertaining to the investigation of an anesthesia-related death or incident would be confidential. The advisory committee could publish certain statistical studies and research reports. Advisory committee work product or information that was confidential would also be privileged, not subject to subpoena or discovery, and could be introduced into evidence against a patient, a member of the family of a patient, or a health care provider. The bill would give certain immunity to a member of the advisory committee, a person employed by TSBDE or a person advising, providing information, counsel, or services to the advisory committee.

The bill would make TSBDE's deliberations on license applications exempt from Texas' open meetings law.

Mental health or physical evaluation for licensing. The bill would allow TSBDE, with probable cause, to request a license applicant or license holder to submit to a mental or physical evaluation by a physician or other health care professional designated by the board. This evaluation would be used only in enforcing the board's grounds to refuse to issue a license or for disciplinary action. If the applicant or license holder did not submit to an evaluation, the bill would direct TSBDE to issue an order requiring the applicant or license holder to show cause why they would not submit. TSBDE would be required to schedule a hearing on the order within 30 days of serving notice to the applicant or license holder. At the hearing, the applicant or license holder would have the burden of proof to show why they should not be required to submit to the evaluation. After the hearing, if the request for an evaluation was not withdrawn, the applicant or license holder would be required to submit to the evaluation within 60 days of the date of a TSBDE order.

The bill would prohibit board information, records, and proceedings related to a licensee or applicant's involvement in a peer assistance program or mental health evaluation from being disclosed under the Texas Public Information Act, except for certain information in the case of a disciplinary action.

Informal settlement conferences. The bill would direct TSBDE to adopt

rules requiring an informal settlement conference to be scheduled within 180 days of beginning an official complaint investigation and would specify other requirements for informal settlement conferences. The bill would direct the governor to appoint nine members to a dental review committee that would serve with members of TSBDE on an informal settlement conference panel. The informal settlement conference panel would be required to make recommendations for the disposition of a complaint or allegation related to a license holder. An attorney for TSBDE would be required to act as legal counsel to the panel and would be present during the informal settlement conference and the panel's deliberations to advise the panel on legal issues that came up during the proceeding.

Under the bill, if TSBDE determined that a complaint was baseless or unfounded within 180 days of beginning the investigation, the board would dismiss the complaint. The board would be required to establish criteria for determining that a complaint was baseless or unfounded. If an informal settlement conference was not scheduled for a complaint before the 180-day period, the board would provide notice for all parties to the complaint and an explanation of why the conference had not been scheduled. The board would not be required to provide notice if it would jeopardize an investigation.

The bill would allow TSBDE to administer oaths and take testimony regarding any matter within the board's jurisdiction when determining license denial and grounds for disciplinary action. The bill would specify that the board could issue a subpoena or subpoena duces tecum to compel a witness to appear for examination under oath or to compel the production of relevant evidence. TSBDE could delegate this authority to the executive director or the board secretary. The subpoena would have to be served by certified mail or personally by the board's investigators and the board would be required to pay for photocopies subpoenaed at the request of the board's staff.

Regulation of dental assistants. The bill would discontinue the pit and fissure sealant certificate for dental assistants and the coronal polishing certificate for dental assistants and require instead that dental assistants register with TSBDE.

TSBDE could adopt and enforce rules requiring a dental assistant to register with the board to perform other dental acts as necessary to protect the public health and safety. TSBDE would be required to maximize the efficient administration of dental assistant registrations by developing a system to track the number of registrations and by coordinating renewal dates.

The bill would require TSBDE to establish requirements for dental assistant registration, including requiring a dental assistant to:

- hold a high school diploma or the equivalent;
- complete an educational program approved by the board that included instruction on dental acts that required registration, basic life support, infection control, and jurisprudence;
- pass an examination approved or administered by the board; and
- meet any additional qualifications established by the board.

The bill would authorize the board to approve courses of instruction and examination provided by private entities to dental assistants and would direct the board to set and collect reasonable and necessary registration and renewal fees. The registration would be valid for two years and would be renewed by paying a fee and complying with any other board requirements. If the board changed the registration expiration date, the bill would authorize the board to prorate registration fees on a monthly basis.

The bill would allow a licensed dentist to delegate to a qualified and trained dental assistant acting under the dentist's supervision if the assistant had registered as a dental assistant and the registration covered the act being delegated. The bill would specify that a delegating dentist would remain responsible for the dental acts of a registered or nonregistered dental assistant performing delegated dental acts. The bill would prohibit a delegated dental assistant from representing to the public that the assistant was authorized to practice dentistry or dental hygiene.

The bill would require a dental assistant to be registered before making a dental X-ray or monitoring the administration of nitrous oxide. The bill would prohibit a dental assistant from making a dental X-ray unless the

assistant was registered with the board. The bill would allow an unregistered dental assistant to make dental X-rays for one year after being hired if the assistant had been hired in that position for the first time and had not previously been issued a registration.

Repeals. The bill would discontinue:

- the Dental Hygiene Advisory Committee; and
- the Dental Laboratory Certification Council.

Record keeping. The bill would require TSBDE by rule to establish conditions under which the board could appoint a person as the custodian of a dentist's billing or dental patient records. Regarding conditions for appointing a custodian, the board would be required to consider the death of a dentist, the mental or physical incapacitation of a dentist, and the abandonment of billing or dental patient records by a dentist.

Dental laboratories. Under the bill, a dental laboratory registration would be valid for a term of one or two years, as determined by TSBDE rule. The bill would require at least one employee who worked on the dental laboratory premises to have completed the minimum number of continuing education hours as required by board rule and would remove the existing 12-hour requirement.

The bill would require TSBDE to adopt rules and fees affected by the bill by March 1, 2018. The governor would be required to appoint 11 members to TSBDE by December 1, 2017, including:

- two dentist members and one dental hygienist member with terms expiring February 1, 2019;
- two dentist members, one dental hygienist member, and one public member with terms expiring February 1, 2021; and
- two dentist members, one dental hygienist member, and one public member with terms expiring February 1, 2023.

TSBDE would be required to appoint members to the advisory committee on dental anesthesia and the governor would be required to appoint

members to the dental review committee by December 1, 2017. The bill's provisions would apply to members of TSBDE appointed before, on, or after the bill's effective date.

TSBDE would be required to issue, starting September 1, 2018, a dental X-ray registration or a nitrous oxide monitoring registration to a dental assistant who held a current certificate issued by TSBDE before that date and who met relevant continuing education requirements. Nitrous oxide certificates and X-ray certificates issued under previous law would expire on September 1, 2019. The repeal of a law by the bill would not entitle a person to a refund if the fee was paid before the bill's effective date.

Provisions in the bill related to a complaint filed with TSBDE would apply only to an investigation or disposition of a complaint filed on or after March 1, 2018. A violation of a law that was repealed by the bill would be governed by the law in effect on the date of the violation.

Changes to anesthesia permits and anesthesia-related inspections under the bill would take effect on March 1, 2018. Certain provisions in the bill related to dental assistant delegation and registration would take effect on September 1, 2018. Unless otherwise specified, the bill would take effect on September 1, 2017.

SUPPORTERS SAY:

SB 313 would reduce the size of the Texas State Board of Dental Examiners' (TSBDE's) membership to allow the board to better focus on its mission of ensuring high quality and safe dental care. The bill also would appropriately deregulate dental assistants, fill in regulatory gaps regarding dental anesthesia, increase avenues for stakeholder input, and make other changes to increase efficiency at the board. Structural changes to the membership and composition of the board in the bill are necessary to focus TSBDE on its public protection mission and help ensure the effectiveness of the agency.

The bill would not specify which types of dentists would be on the board to help avoid conflicts of interest between the board and those regulated by the board. The bill would align the composition of the board with the amount of technical expertise necessary to help focus the board on its core mission and make better use of staff resources.

The bill would appropriately deregulate two certificates for dental assistants and combine the other certificates into a board registration. Dental assistants pose little risk to public safety. Dental assistants can only perform reversible tasks under the delegated authority of the dentist, who remains responsible for patient care and safety. Dental assistants have a low volume of meaningful complaints related to standard of care and state regulation of assistants is not needed to protect public health. Board resources could be put to better use focusing on higher-risk agency responsibilities. Under the bill, dental assistants still could receive any needed credentials from national organizations and private market forces could provide any training or oversight needed by employers or the public.

The bill would fill in gaps in regulation of dental anesthesia to help keep patients safe while preventing government overreach. The Sunset staff report found that the board lacked key enforcement tools to ensure dentists were prepared to respond to increasing anesthesia concerns. The bill would address the recent increase in serious patient harm and death related to dental anesthesia by requiring written emergency action plans for any dentist administering anesthesia. By allowing the board to conduct inspections of dentists administering anesthesia in office settings and requiring anesthesia training for dentists through permits, the bill would help improve public health and safety and would align Texas requirements with those in other states. The bill would not be overly prescriptive, avoiding the need for future legislation to fix overly burdensome statutory requirements.

The bill would increase avenues for stakeholder input and would remove the Dental Hygiene Advisory Committee and the Dental Laboratory Certification Council from statute. Removing these committees would give TSBDE more flexibility in convening more diverse groups of stakeholders to give input as needed.

The bill appropriately would not include a provision requiring licensees' prescribing patterns to be monitored or for dentists to review patients' prescribing history. Such a requirement would be unnecessary and could overly burden dentists.

The provision in the bill that allows the advisory committee on anesthesia-related deaths to receive funding or gifts mirrors existing statute related to state entities doing similar work and is specific to that committee, not the entire board.

The bill better enables TSBDE to protect public health and safety in dentistry by requiring evaluations for licensees suspected of impairment due to substance abuse or mental illness. The results of the evaluation would be confidential and would encourage licensee participation in treatment programs.

OPPONENTS SAY:

SB 313 should require at least one oral and maxillofacial surgeon and other specialists to be included as dentist members of TSBDE because they have different education and training from general dentists. The board composition should not be changed from 15 members and also should include a dental assistant on the board.

The bill should not limit regulation of dental assistants. Dental assistants are properly regulated under current law and there are few complaints about their care because of the current level of regulation. Certificate programs result in a higher level of skill and better delivery of care by dental assistants. Unregistered dental assistants should be required to have training in radiology before being able to X-ray a patient under any circumstances. Allowing dental assistants to act without adequate education could expose patients or dental staff to unsafe levels of radiation. The bill also should maintain the dental assistant certification for coronal polishing and sealants because the techniques used for polishing and sealants have potential to harm both the patient and the dentist. To reduce the risk to patients, the bill should further limit when dentists could delegate a task to a dental assistant.

While the bill would increase anesthesia safety above current requirements, every dentist who holds a permit from TSBDE to perform levels 2, 3, or 4 sedation also should be required to employ a dental anesthesia assistant certified by the Dental Anesthesia Assistant National Certifying Examination or a similar national entity. This would improve public health and the quality of patient care. Dentists who provide

anesthesia to level 3 or 4 patients also should be required to consult with a physician before providing the anesthesia, to conform with American Dental Association guidelines.

The bill should require the board to have guidelines specific to office-based anesthesia procedures versus those performed in a hospital or surgical center. The course requirements for anesthesia should be stricter than required by the bill because while patients should have access to pain relief, they should not have to risk their lives by undergoing anesthesia with an undertrained dentist. To ensure patient safety, TSBDE should inspect all dentists who perform high-risk anesthesia, not just those who were at a higher risk than other dentists. The board also should have the authority to issue cease-and-desist orders in cases of imminent danger to the public by a licensee.

The bill should implement the Sunset recommendation to require dentists to search the Prescription Monitoring Program and review a patient's prescription history before prescribing opioids, benzodiazepines, barbiturates, or carisoprodol.

The bill should not allow the advisory committee to accept outside funds or gifts to avoid conflicts of interest.

The bill should not require a mental evaluation for certain dentists. Requiring a mental health screening would single out those with a mental illness without protecting the public.

OTHER OPPONENTS SAY:

Instead of combining all dental assistant certificates into one registration, the bill should follow the model of the Oklahoma Board of Dentistry and list every available certificate with a "yes" or "no" if the individual holds more than one certificate. This would reduce the time and resources TSBDE would have to spend on issuing separate certificates while increasing transparency and better protecting patients.

The bill also should not require dentists to purchase a permit to administer anesthesia. This is government overreach and unnecessary regulation.

NOTES:

According to the Legislative Budget Board's fiscal note, the bill would

have no impact on general revenue related funds through fiscal 2018-19. The estimate assumes that provisions of the bill related to deregulation and registration of certain dental assistants could result in an impact to general revenue beginning in fiscal 2018 but the overall estimate on revenue cannot be determined.

SUBJECT: Requirements for installing network nodes in public right-of-way

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 7 ayes — Cook, Giddings, Craddick, Geren, Guillen, K. King, Meyer

0 nays

5 absent — Farrar, Kuempel, Paddie, E. Rodriguez, Smithee

1 present not voting — Oliveira

SENATE VOTE: On final passage, April 6 — 29-0-2 (Hinojosa and Watson present not voting)

WITNESSES: *On House companion bill, HB 2838:*
For — David Tate and Randy Williams, AT&T; Robert Millar, Crown Castle; Patrick Fucik, Sprint; J.D. Rimann, Texas Public Policy Foundation; Richard Lawson, Verizon; (*Registered, but did not testify:* Amandus Derr, Crown Castle; Tom Jones, General Motors; Drew Scheberle, The Greater Austin Chamber of Commerce; Randy Williams, JLL; Thomas Ratliff, T-Mobile; Caroline Joiner, TechNet; Amanda Martin, Texas Association of Business; Pauline Anton, Texas Association of Mexican American Chambers of Commerce; Elizabeth Lippincott, Texas Border Coalition; Michael Geary, Texas Conservative Coalition; Nora Belcher, Texas e-Health Alliance; Matt Matthews, Wireless Infrastructure Association; Cecilia Wood)

Against — Rob Spillar, City of Austin; Tom Tagliabue, City of Corpus Christi; Don Knight, City of Dallas; Dana Burghdoff, City of Fort Worth; Yushan Chang, City of Houston Mayor's Office; Jarrett Atkinson, City of Lubbock; Rogelio Pena, City of San Antonio; Cathy Cunningham, Cities of Westlake and Hurst; Clarence West, Texas Coalition of Cities for Utility Issues; Snapper Carr, Texas Municipal League; (*Registered, but did not testify:* Robert Turner, Brownwood Area Chamber Legislative Committee, City of Brownwood, and City of Early; Clark Cornwell; City of Austin; Chance Sparks, City of Buda and the Texas Chapter of the

American Planning Association; Lindsey Baker, City of Denton; Guadalupe Cuellar, City of El Paso; Douglas Athas, City of Garland; Heberto Ramirez, City of Laredo; Michelle Leftwich, Kevin Pagan, and Austin Stevenson, City of McAllen; Angela Hale, City of McKinney; Karen Kennard, City of Missouri City; James McCarley, City of Plano; Scott Campbell, City of Roanoke; Ricardo Ramirez and Robert Valenzuela, City of Sugar Land; Ashley Nystrom, City of Waco; Craig Farmer, City of Weatherford; Jim Arnold, Scenic Houston and Scenic Texas; Holly McPherson, Texas Municipal League)

On — Todd Baxter, Charter Communications; Velma Cruz, Texas Cable Association; Walt Baum, Texas Public Power Association; (*Registered, but did not testify:* Blanca Laborde, Level 3 Communications; Brian Lloyd, Public Utility Commission)

BACKGROUND: Local Government Code, ch. 283 governs the management of public right-of-way used by telecommunications providers in a municipality. Under sec. 283.002(6), a public right-of-way is defined as the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which a municipality has an interest.

According to the Federal Communications Commission, small cells are defined as low-powered, base stations that provide wireless coverage for areas ranging in size from homes and offices to stadiums, hospitals, and other outdoor spaces. Wireless service providers often use small cells to provide connectivity in areas that present coverage gaps created by buildings, towers, and challenging terrain. Small cells are a type of network node.

DIGEST: CSSB 1004 would allow wireless network companies to place network nodes in the public right-of-way (ROW) and would provide rules, regulations, and fee structures to reimburse cities for use of the ROW. Municipalities would retain authority to manage the public ROW to ensure the health, safety, and welfare of the public, and would receive compensation installing network nodes on poles.

Definitions. The bill would define "network node" as equipment at a fixed location that enables wireless communications between user equipment,

such as a cell phone, and a communications network. The bill would define "collocation" as the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public ROW on or adjacent to a pole.

Limitation on size of network nodes. The bill would limit the size and placement of network nodes. Equipment attached to a utility pole would have to be installed in accordance with the National Electric Safety Code, subject to applicable codes, and the utility pole owner's construction standards.

Use of public ROW. The bill would allow a network provider to connect a network node using the ROW under certain conditions provided by the bill. A municipality would be prohibited from entering into an exclusive agreement with any person for use of the ROW for the construction, operation, marketing, or maintenance of network nodes or node support poles. A network provider that wanted to connect a network node to the network using the public ROW could install its own transport facilities, subject to certain conditions, or obtain transport service from a person that was paying municipal fees to occupy the public ROW that were not less than $28 per month.

A rate for use of the public ROW could not exceed an annual amount equal to $250 per network node installed in the public ROW in the city limits. The municipality could charge a network provider a lower fee if the lower fee was nondiscriminatory, related to the use of the public ROW, and not a prohibited gift of the public property. A municipality also could adjust the fee once annually by half the annual change to the consumer price index.

Collocation of network nodes. A municipality would be required to allow network nodes to be placed beside other network nodes on service poles under an agreement with nondiscriminatory terms and at a rate not greater than $20 per year per pole. The municipality would be prohibited from requiring additional compensation from a network provider other than the compensation authorized by the bill.

Access and approvals. Subject to the approval of a permit application if

required, a network provider could, without need for a special use permit or similar zoning review and not subject to further land use approval, do the following in the public ROW:

- construct, modify, maintain, operate, relocate, and remove a network node or node support pole;
- modify or replace a utility pole or node support pole; or
- collocate on a pole, subject to an agreement with the municipality.

Construction and maintenance requirements. The bill would provide certain construction and maintenance requirements for network nodes and node support poles, including the requirement that network nodes and support poles not obstruct, impede, or hinder the usual travel or public safety in a public ROW. A network provider could construct, modify, or maintain a network node or support pole that exceeded height and distance limitations only if approved by the municipality.

Installation in municipal parks and residential areas. A network provider could not install a new node support pole in a public ROW in a municipal park or adjacent to certain streets in or around residential areas without the municipality's written consent.

Installation in historic or design districts. The bill would place several conditions on network provider operations in an area designated as an historic district or design district that featured decorative poles. In such areas, the network provider would have to obtain advance approval from a municipality before collocating new network nodes or installing new node support poles. A municipality also could request that the provider comply with the design and aesthetic standards of district.

Compliance with undergrounding requirement. A network provider would be required to comply with underground installation requirements that prohibit installing aboveground structures without first obtaining zoning and land use approval.

Design manual. A municipality could adopt a design manual for the installation and construction of network nodes and support poles. A network provider would be required to comply with a manual in place on

the permit application date.

Applications and permits. Except as provided in the bill, a municipality could not prohibit, regulate, or charge for the installation or collocation of network nodes in a public ROW.

A municipality could require one or more permits for installations under certain conditions outlined in the bill. It could require an applicant to provide certain information, but not more than it would of a telecommunications utility that was not a network provider. This information could include construction and engineering drawings, a certificate that the nodes comply with Federal Communications Commission regulations, and certification that the nodes would be placed into service no more than 60 days after the completion of construction and final testing. An application that did not require zoning or land use approval would be approved by a municipality unless the application or work did not comply with applicable codes, rules, or regulations.

The municipality would be required to approve or deny an application for a node support pole within 150 days after receiving the application, an application for a network node within 60 days, and a transport facility within 21 days. An application would be deemed approved if it was not approved or denied before the applicable date. A network provider would be required to begin installation within six months of approval.

Application fees. A municipality could charge an application fee for a permit only if the municipality required a fee for similar types of commercial development. The application fee could not exceed the lesser of the municipality's processing costs, or $500 per application covering up to five network nodes, $250 for each additional network node per application, and $1,000 per application for each pole.

A fee, application, or permit could not be required for certain work outlined in the bill, including routine maintenance that did not require excavation or closing of sidewalks or vehicular lanes in a public ROW. A municipality could require advance notice for certain types of work.

Effect on other utilities and providers. The bill would not apply to poles

and structures owned or operated by investor-owned electric utilities, electric cooperatives, telephone cooperatives, or telecommunications providers. An approval for the installation placement, maintenance, or operation of a network node or transport facility could not be construed to allow:

- cable service or video service without complying with requirements for state-issued cable and video franchises; or
- radio station or a telecommunications service in a public ROW.

A municipality could not adopt or enforce any requirement for a wireless service provider, or its affiliate, that holds a cable or video franchise, to obtain any additional authorization or pay any fees based on the provider offering wireless service over its network nodes.

General conditions of access. A municipality could continue to exercise zoning, land use, planning, and permitting authority in the city limits, including with respect to utility poles. A municipality also could impose police enforcement of regulations for the management of the public ROW that apply to all persons.

A network provider would be required to relocate or adjust network nodes in a public ROW in a timely manner and without cost to the municipality. A network provider also would be required to ensure the operation of a network node did not cause harmful radio frequency interference with a Federal Communications Commission-authorized mobile telecommunications operation of the municipality.

Effective date. The bill would take effect September 1, 2017. The rates, terms, and conditions of agreements and ordinances entered into or enacted before the effective date would apply to all network nodes installed and operational before that date. For rates, terms, agreements, or ordinances affected by the bill that did not comply with the requirements of the bill, a municipality would be required to amend the agreement or ordinance to comply, and those amendments would take effect six months after the effective date. The rates, terms, agreements, or ordinances affected by the bill enacted on or after the effective date would be required to comply with the bill's requirements.

SUPPORTERS SAY:

CSSB 1004 would provide the regulatory framework and guidelines necessary to develop the next advancement in faster and more efficient wireless broadband, which will soon evolve to 5G service in Texas cities. Wireless consumption has increased significantly during the past several years and will only continue to grow, requiring more investment in faster service.

Rather than relying on a patchwork of confusing regulations that differ across cities, the bill would streamline the process for network providers to build small cell nodes on municipally owned poles, helping companies expand 5G access across the state. Because many cities have not adopted policies for the use of small cell nodes, a statewide policy is needed to establish a regulatory framework that is fair and equitable.

The bill would introduce several requirements on the size and placement of network nodes and support poles, including restrictions on the construction of poles in certain residential, historic, and design districts. Protections in the bill would address potential risks of interference with traffic signals and other city infrastructure. Cities also could develop their own customized design manuals, allowing them to enact policies according to their unique needs.

The bill is designed to ensure that certain companies do not receive an unfair advantage, including a provision that approval for installation not be construed to authorize an entity to offer cable or video services without following the same requirements applicable to cable and video service providers.

The fees under the bill are at a level that would incentivize companies to provide small cell networks, creating more investment for needed technology and better wireless broadband service for consumers. While reasonable, the fees actually would be higher than those in other states with similar requirements for small cell deployment.

OPPONENTS SAY:

CSSB 1004 would be unnecessary because many cities already work with network providers to allow access to their poles and have agreements with them on the use of their infrastructure. The bill would take away a city's

ability to control the use of rights-of-way (ROW), removing its capacity to uphold safety and design standards. Cities also would be required to allow third-party access to traffic signals and other city infrastructure, creating risks to public safety if there were electrical or other issues with the network nodes.

The bill would give an unfair advantage to certain companies by allowing them to pay one rate for use of the ROW, while cable companies would have to continue to pay higher fees and regulatory costs for the same use of the ROW.

The proposed fee for companies to have access to the ROW is too low, which could incentivize some companies to build new poles for every small cell, as allowed under the bill. This could lead to a proliferation of unsightly poles around a city. Providing private companies access to publicly owned structures without charging enough to cover costs essentially would be a subsidy for network providers.

NOTES:

CSSB 1004 differs from the Senate-passed bill in several ways, including that the committee substitute would:

- increase the amount of application fees from $100 to $500 per application covering up to five network nodes and from $50 to $250 for each additional network node per application;
- add a $1,000 fee per application for each pole; and
- prohibit network providers from installing a new node in a municipal park without the city's written consent.

According to the Legislative Budget Board's fiscal note, the bill could have a significant, but indeterminate, negative fiscal impact on local governments.

A companion bill, HB 2838 by Geren, was left pending after a public hearing in the House State Affairs Committee on April 19.

SUBJECT: Revising procedures for removing children from a home

COMMITTEE: Human Services — favorable, without amendment

VOTE: 8 ayes — Raymond, Frank, Klick, Miller, Minjarez, Rose, Swanson, Wu

1 nay — Keough

SENATE VOTE: On final passage, May 1 — 31-0

WITNESSES: *On House companion bill, HB 3108:*
For — (*Registered, but did not testify*: Patricia Hogue, Texas Lawyers for Children; Andrew Homer, Texas CASA; Knox Kimberly, Upbring; Adriana Kohler, Texans Care for Children; Lee Nichols, TexProtects; James Thurston, United Ways of Texas; Virginia Parks)

Against — Johana Scot, Parent Guidance Center; Cecilia Wood, Texas Home School Coalition

On — Tina Amberboy, Supreme Court Children's Commission; (*Registered, but did not testify*: Elizabeth "Liz" Kromrei, Department of Family and Protective Services)

BACKGROUND: Family Code, ch. 262 governs the procedures for suits by a government agency to remove children from their homes. Emergency removals involve taking a child in immediate danger away from a home, with or without a court order, while non-emergency removals involve taking a child only after notice and an adversary hearing.

DIGEST: SB 999 would revise procedures relating to the removal of a child from a home. It would consolidate procedures for emergency and non-emergency hearings on removing children from a home and specify the findings that would need to be made in certain circumstances.

Petition after emergency removal. In addition to existing procedures, the bill would require a governmental entity that had removed a child without a court order to submit an affidavit stating:

- the reason for removal;
- that continuation of the child in the home would have been contrary to the child's welfare;
- that there was no time for a full adversary hearing prior to removal; and
- that reasonable efforts were made to prevent or eliminate the need for removal of the child.

Full adversary hearing. A full adversary hearing held prior to the removal of a child would have to occur within 30 days after a petition was filed. At the conclusion of the hearing, the court would have to issue a temporary order if it found there was a continuing danger to the physical health or safety of a child caused by the person entitled to possession of a child and that continuation of the child in the home would be contrary to the child's welfare. The court also would have to find that reasonable efforts were made to prevent or eliminate the need for removal of the child.

During a full adversary hearing held after emergency removal of a child, a court could consider if a person in the household had abused or neglected another child when determining whether there was a continuing danger to a child in a home.

Continuance. The bill would extend an existing, maximum seven-day continuance of an adversarial hearing that is currently available to indigent persons to non-indigent persons for good cause shown. The continuance would allow time for the individual to hire an attorney or for the individual's attorney to file a response to the removal petition and prepare for the hearing.

Effective date. The bill would take effect September 1, 2017, and would apply only to a suit that was filed on or after that date.

SUPPORTERS SAY:

SB 999 would ensure the same level of protection was afforded to parents and children in non-emergency removal hearings as in emergency removals. Currently, the required findings for non-emergency hearings are less strict than those required in an emergency hearing, despite the fact

that both can result in a child being removed from a home. This bill would ensure that non-emergency hearings in child removal suits had the same procedural safeguards as emergency removal hearings.

The bill would simplify existing procedures and clarify that the requirements of an affidavit in support of a petition for removal should include the same information that a judge would need to consider before ruling.

The bill would support current law and leave such important decisions as child placement to the discretion of judges who can review each case on an individual basis, rather than applying an overly restrictive, one-size-fits-all legal standard.

OPPONENTS SAY:

SB 999 should prioritize placing children with a noncustodial parent unless there was a present threat of physical harm, a standard that would better protect the integrity of families.

NOTES:

A companion bill, HB 3108 by Giddings, was reported favorably from the House Human Services Committee and placed on the General Calendar for May 9.

SUBJECT: Designating the San Angelo State Supported Living Center as forensic

COMMITTEE: Human Services — favorable, without amendment

VOTE: 7 ayes — Raymond, Frank, Keough, Klick, Miller, Minjarez, Rose

0 nays

2 absent — Swanson, Wu

SENATE VOTE: On final passage, April 26 — 31-0, on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 3420:*
For — None

Against — None

On — Susan Murphree, Disability Rights Texas (*Registered, but did not testify*: Scott Schalchlin, Department of Aging and Disability Services)

BACKGROUND: Health and Safety Code, sec. 555.002 requires the Department of Aging and Disability Services to establish a separate forensic state supported living center (SSLC) for the care of high-risk alleged offender residents and directs the department to designate the Mexia SSLC for this purpose. Sec. 555.002 also requires that high-risk alleged offender residents be placed in separate homes at the forensic SSLC based on an individual's age or sex.

DIGEST: SB 1300 would require the Department of Aging and Disability Services to designate the San Angelo State Supported Living Center (SSLC) as a forensic SSLC. The bill also would remove the requirement that high-risk alleged offenders be placed in separate homes at a forensic SSLC and instead would require that they be placed in appropriate homes.

The bill would take effect September 1, 2017.

SUPPORTERS SAY: SB 1300 would align statute with current practice by designating the San

Angelo State Supported Living Center (SSLC) as a forensic SSLC. San Angelo currently receives forensic residents despite its lack of formal designation as a forensic SSLC.

The bill also would give forensic SSLC facilities more flexibility to treat patients and save money by removing the requirement that separate housing be provided for high-risk alleged offenders. The volume of high-risk alleged offenders has been lower than expected when the requirement for separate housing was created, resulting in the underuse of space set aside for separate housing. Additionally, the line between a high-risk alleged offender and an alleged offender who is not high-risk can be thin, and many high-risk alleged offenders can safely cohabitate with others.

The bill still would maintain adequate safeguards for resident safety by requiring that residents be placed in appropriate homes at an SSLC. The appropriateness of housing would be decided comprehensively on a case-by-case basis by an interdisciplinary team made up of the resident and his or her guardian, as well as nurses, doctors, and social workers involved in the resident's care. The bill also would not prohibit separate housing of residents if that was deemed most appropriate.

OPPONENTS SAY:

SB 1300 would remove the requirement that high-risk alleged offenders be housed separately, which could increase the chance of residents harming one another. Although the bill would require that residents be placed in “appropriate” homes at an SSLC, the lack of statutory definition for what qualifies as appropriate leaves unclear whether it would sufficiently guarantee the safety of those housed at a forensic SSLC.

NOTES:

A companion bill, HB 3420 by Darby, was withdrawn from the Local, Consent, and Resolutions Calendar on May 12.

SUBJECT: Reviewing eligibility for support from the universal service fund

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 11 ayes — Cook, Giddings, Craddick, Farrar, Guillen, K. King, Kuempel, Meyer, Paddie, E. Rodriguez, Smithee

0 nays

2 absent — Geren, Oliveira

SENATE VOTE: On final passage, April 20 — 24-6 (Burton, Creighton, Huffines, Nelson, V. Taylor, Watson)

WITNESSES: No public hearing

BACKGROUND: In 1987, the 70th Legislature established the Texas Universal Service Fund (USF) to support telecommunications services in the state through various programs. Two programs supported by the USF assist telecommunications companies in providing basic local service at reasonable rates in high-cost rural areas: the Texas High-Cost Universal Service Plan and the Small and Rural Incumbent Local Exchange Company Universal Service Plan.

Incumbent local exchange carriers are telecommunications providers that historically were regulated in the Texas market before the Federal Communications Commission deregulated the local exchange market in the Telecommunications Act of 1996. In comparison, competitive local exchange carriers are non-incumbent companies operating in an exchange that provide competition to incumbent local exchange carriers.

The 83rd Legislature in 2013 enacted SB 583 by Carona, which amended eligibility criteria for telecommunications providers receiving support from the USF. The bill gradually reduced support from the fund on specified dates based on whether a provider was an incumbent local exchange carrier or another telecommunications provider and on the number of access lines served by a provider.

Among other changes, SB 583 added subsection (p) to Utilities Code, sec. 56.023. Subsection (p) states that if an incumbent local exchange company or cooperative is ineligible for support under the High-Cost Universal Service Plan or the Small and Rural Incumbent Local Exchange Company Universal Service Plan, the High-Cost Universal Service Plan may not provide support to any other telecommunications providers for services in that exchange, with certain exceptions. An eligible provider that is receiving support under that plan may continue to receive it until the later of two years after the date the incumbent local exchange provider or cooperative ceased receiving support in that exchange or December 31, 2017.

Sec. 56.023(q), also added by SB 583, entitles cooperatives or affiliates of cooperatives receiving support under subsection (p) to continued support through the High-Cost Universal Service Plan through December 31, 2017.

DIGEST:

SB 1476 would establish a process for the Public Utility Commission (PUC) to review the continued support given to certain competitive eligible telecommunications providers through the Texas High-Cost Universal Service Plan and determine whether the support should be eliminated. It would remove the requirement under Utilities Code, sec. 56.023(p) that support to providers expires the later of two years after the date the incumbent local exchange provider or cooperative ceased receiving support in that exchange or December 31, 2017.

If the number of access lines served by eligible competitive telecommunications providers continuing to receive support through the High-Cost Universal Service Plan declined by at least 50 percent compared to levels on December 31, 2016, the PUC would be required to review the amount of support given to these providers at least once every three years to determine whether continuing the support was in the public interest.

The bill would require the PUC by rule to establish the criteria to determine whether support should be eliminated. The first review would be required to take place before the end of the year following the year in

which the number of access lines first declined by at least 50 percent.

Support for eligible telecommunications providers under the bill would expire December 31, 2023.

Utilities Code, sec. 56.023(q), entitling eligible cooperatives to continue receiving support through December 31, 2017, would be repealed.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUPPORTERS SAY:

SB 1476 would continue a vital program needed to provide phone service to rural areas where it may not otherwise be feasible for telecommunications companies to do business. Technology has not yet advanced to the point where smaller telecommunication companies in rural areas are able to compete successfully, and the support provided through the Texas High-Cost Universal Service Plan still is needed to help provide phone service to remote areas.

The bill would require the Public Utility Commission (PUC) to review the current level of support if a provider's access lines declined by at least 50 percent, ensuring the subsidy would be discontinued if it no longer was needed, and would cease support to remaining applicable providers on December 31, 2023.

OPPONENTS SAY:

SB 1476 would prolong government subsidies to certain telecommunications companies, giving an unfair advantage to phone companies in competitive markets. In some markets, certain telecommunications companies receive the subsidy while others are not eligible. Rather than the government picking winners and losers, certain provisions of the fund should be allowed to expire on December 31, 2017, rather than being extended.

SUBJECT: Requiring DFPS to conduct skills assessment for certain foster children

COMMITTEE: Human Services — favorable, without amendment

VOTE: 8 ayes — Raymond, Frank, Klick, Miller, Minjarez, Rose, Swanson, Wu

0 nays

1 absent — Keough

SENATE VOTE: On final passage, May 1 — 31-0

WITNESSES: *On House companion bill, HB 4168:*
For — Katherine Barillas, One Voice Texas; Sarah Crockett, Texas CASA; Tymothy Belseth; (*Registered, but did not testify:* Will Francis, National Association of Social Workers - Texas Chapter; Josette Saxton, Texans Care for Children; Pamela McPeters, TexProtects; James Thurston, United Ways of Texas; Knox Kimberly, Upbring; Thomas Parkinson)

Against — None

On — (*Registered, but did not testify:* Elizabeth "Liz" Kromrei, Department of Family and Protective Services)

BACKGROUND: Family Code, sec. 263.306(a-1) and sec. 263.5031 require a court to take certain actions at each permanency hearing for children in the conservatorship of the Department of Family and Protective Services (DFPS) before and after the court renders a final order, respectively.

Sec. 264.121 governs the transitional living services administered by DFPS, including the Preparation for Adult Living program. Sec 264.121(e) requires DFPS to ensure that foster youth on or before the date they turn 16 receive a copy of their birth certificate, social security card, and personal identification certificate. Sec. 264.121(e-1) requires DFPS to provide to youth who are at least 18, or have had the disabilities of minority removed, their birth certificate, immunization records, health

passport, personal identification certificate, and proof of enrollment in Medicaid, unless the youth already had the information or document.

DIGEST:

SB 1758 would require the Department of Family and Protective Services (DFPS) to conduct an independent living skills assessment for all youth in DFPS permanent managing conservatorship (PMC) who were 14 and 15 years old and all youth in DFPS conservatorship who are at least 16 years old. DFPS would have to update the assessment annually through the youth's plan of service in coordination with the youth, the youth's caseworker, the Preparation for Adult Living (PAL) program staff, and the youth's caregiver.

The bill also would require DFPS to collaborate with stakeholders to develop a plan to standardize the PAL curriculum that ensured youth who were at least 14 years old received relevant and age-appropriate information and training. DFPS would have to report the plan to the Legislature by December 1, 2018.

For a child whose permanency goal was another planned permanent living arrangement, the bill would require the court at each permanency hearing before and after the court rendered a final order to determine:

- whether DFPS had conducted the required independent living skills assessment;
- whether DFPS had addressed the goals identified in the child's permanency plan, including the child's housing plan, and the results of the independent living skills assessment;
- if the youth was at least 16 years old, whether DFPS had provided the youth with certain identification documents as specified under Family Code, sec. 264.121(e); and
- if the youth was at least 18 years old or had the disabilities of minority removed, whether DFPS had provided the youth with certain identification and medical documents as specified under Family Code, sec. 264.121(e-1).

The bill would add a section to Family Code, ch. 263, subch. E, governing the final order for a child under DFPS care, that would require courts to verify in suits involving a child who was at least 14 years old that DFPS

met the four aforementioned criteria.

At each permanency hearing before the court rendered a final order, the court would have to ask all parties present whether the child or the child's family had a Native American heritage and identify any Native American tribe with which the child could be associated.

DFPS would be required to implement SB 1758 only if the Legislature appropriated funds for the specific purposes of the bill. If the Legislature did not appropriate money to implement the bill, the department could but would not have to carry out its provisions.

The bill would take effect September 1, 2017, and would apply to a suit affecting the parent-child relationship filed before, on, or after that date. To the extent of any conflict, SB 1758 would prevail over another act of the 85th Legislature relating to nonsubstantive additions and corrections to code.

SUPPORTERS SAY:

SB 1758 would improve outcomes for foster youth and strengthen accountability for the Department of Family and Protective Services (DFPS). Reports indicate some foster youth lack adequate preparation for adulthood and are prone to unemployment and homelessness after they age out of the foster care system. Requiring DFPS to conduct an independent living skills assessment for foster children in permanent managing conservatorship who were at least 14 years old would give these children more time to transition as self-sufficient adults. The collaboration among DFPS and stakeholders to standardize the Preparation for Adult Living (PAL) program's curriculum could transform the PAL format from a classroom-type setting to a hands-on learning experience, which would be a more effective learning style for many foster children.

The bill also would enhance accountability by requiring courts to verify that foster children received their legal documents, such as social security cards and birth certificates, and their medical history information, depending on the foster child's age. Timely receipt of these documents would help foster children apply for jobs, college, and housing, if necessary.

OPPONENTS SAY:

No apparent opposition.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of about $2.5 million to general revenue related funds in fiscal 2018-19.

A companion bill, HB 4168 by Turner, was reported favorably from the House Committee on Human Services and placed on the House General State Calendar for May 11.

SUBJECT: Outlawing unauthorized recordings on digital storage devices

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 6 ayes — Oliveira, Shine, Collier, Romero, Villalba, Workman

1 nay — Stickland

SENATE VOTE: On final passage, April 20 — 30-1 (Huffines)

WITNESSES: *On House companion bill, HB 2483:*
For — Luis Linares, Recording Industry Association of America; (*Registered, but did not testify*: Jerry Valdez, Recording Industry Association of America)

Against — None

BACKGROUND: **Unauthorized recording.** Under Business and Commerce Code, sec. 641.051, a person commits an offense if the person knowingly reproduces, sells, transports, advertises, or possesses for sale any recording for financial gain without the consent of the owner. This offense is punishable by:

- imprisonment for up to five years and/or a fine up to $250,000 for an offense involving at least 1,000 recordings over 180 days or for a previous conviction;
- imprisonment for up to two years and/or a fine up to $250,000 for an offense involving more than 100 but fewer than 1,000 recordings over 180 days; or
- confinement in county jail for up to a year and/or a fine up to $25,000 for an offense that is not punishable under either of the above conditions.

"Recording" is defined by sec. 641.001 to mean a tangible medium on which sounds, images, or both are recorded, including a phonograph record, disc, tape, audio or video cassette, wire, film, or other medium.

Labeling. Under Business and Commerce Code, sec. 641.054, a person commits an offense if the person, for commercial advantage or private financial gain, knowingly advertises, sells, or possesses for sale a recording that does not clearly disclose the name and address of the manufacturer and the name of the performer or group. This offense is punishable by:

- imprisonment for up to five years and/or a fine up to $250,000 for an offense involving at least 65 recordings over 180 days or for a previous conviction;
- imprisonment for up to two years and/or a fine up to $250,000 for an offense involving more than seven but fewer than 65 recordings over 180 days; or
- confinement in county jail for up to a year and/or a fine up to $25,000 for an offense that is not punishable under either of the above conditions.

DIGEST:

SB 1343 would modify the Business and Commerce Code to outlaw the sale of unauthorized recordings on digital storage devices and set guidelines for restitution in improper labeling cases.

Unauthorized recording. The bill would amend the definition of "recording" in Business and Commerce Code, sec. 641.001 to include a memory card, flash drive, hard drive, or data storage device on which sounds, images, or both were recorded.

Labeling. SB 1343 would require courts convicting a person of an improper labeling offense to order restitution to the owner, lawful producer, or trade association representing the owner or producer of a master recording who had suffered financial loss as a result of the offense. Restitution ordered would have to be the greater of:

- the aggregate wholesale value of the authorized recordings corresponding to the number of unauthorized recordings; or
- the actual financial loss to the owner, producer, or trade association.

Restitution also would have to include the costs associated with

investigating the offense. Possession of an unauthorized recording intended for sale would constitute an actual financial loss equal to the legitimate wholesale value of the purchases displaced.

The bill also would remove failure to clearly disclose the name of the performer or group on the cover of a recording from the offense of improper labeling.

The bill would take effect September 1, 2017, and would apply only to an offense committed on or after that date.

SUPPORTERS SAY:

SB 1343 would provide a necessary modernization of laws governing unauthorized recordings, including music piracy, to adapt to the digital age. Current law is unclear about the legality of selling unauthorized recordings on digital devices, but this method is a growing problem in Texas. Flea market vendors in this state recently have been discovered selling flash drives with thousands of pirated songs, profiting from stolen material while not paying local, state, or federal taxes.

The bill would require courts to order a person convicted of the offense of improper labeling to make restitution to the lawful owner or producer. Music piracy is a serious crime that deprives artists and record labels of their earned profits and results in lost jobs. It is an economic crime that constitutes an actual financial loss, and injured parties should be able to recover for their losses.

The bill's restitution standards would not be overly punitive, as the theft of copyrighted material is still theft. In addition, current statute clearly provides that parties must possess stolen material for the purpose of selling it to have committed an offense, so the bill would be narrowly tailored to apply to penalties for the criminal resale of copyrighted material.

OPPONENTS SAY:

The bill's guidelines for restitution for improper labeling would be overly punitive for the relatively low-impact crime of music piracy. In addition to a $250,000 fine and five years in jail for the sale of a flash drive with as few as 65 unauthorized songs on it, the bill would require courts to order restitution. Federal law already allows injured parties to sue for copyright

infringement under 17 U.S.C. ch. 5, and the bill's additional punishment would be unnecessary.

NOTES: A companion bill, HB 2483 by Parker, was placed on the General State Calendar for May 8.

SUBJECT: Amending standards for recognizing foreign-country money judgments

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Smithee, Farrar, Gutierrez, Murr, Neave, Rinaldi, Schofield

0 nays

2 absent — Hernandez, Laubenberg

SENATE VOTE: On final passage, April 10 — 31-0

WITNESSES: *On House companion bill, HB 2122:*
For — Craig Enoch, John Paul DeJoria; (*Registered, but did not testify:* George Christian, Texas Civil Justice League; Amanda Martin, Texas Association of Business; Lee Parsley, Texans for Lawsuit Reform; Stephanie Simpson, Texas Association of Manufacturers)

Against — John Lahad, Maghreb Petroleum Exploration & Mideast Fund for Morocco

BACKGROUND: Civil Practice and Remedies Code, ch. 36, or the Uniform Foreign Country Money-Judgment Recognition Act of 1962, specifies when a court may or must enforce the final and conclusive judgment of a court in a foreign country.

DIGEST: CSSB 944 would repeal the uniform act of 1962 and enact the Uniform Foreign-Country Money Judgments Recognition Act (UFCMJRA) of 2005, which contains broadly similar provisions, with certain exceptions.

Standards for recognition. CSSB 944 would add two conditions for court recognition of foreign-country judgments. A Texas court would not be required to recognize a judgment if:

- it was rendered in circumstances that raised substantial doubt about the integrity of the foreign court with respect to the judgment; or
- the specific proceeding in the foreign court leading to the judgment

was not compatible with the requirements of due process of law.

In repealing the uniform act of 1962, the bill also would remove a provision that currently creates grounds for non-recognition of a foreign-country judgment rendered in a country that does not recognize judgments rendered in Texas that otherwise conform to the definition of "foreign country judgment."

Statute of limitations. The bill would apply the UFCMJRA only to actions brought within the earlier of the time during which the foreign-country judgment was effective in the foreign country or 15 years from the judgment's original effective date.

Procedures. The bill specifies actions that would have to be taken to seek enforcement of a foreign-country judgment. If recognition was sought as an original matter, the party seeking recognition would file an action. If recognition was sought in a pending action, it could be raised as a counter-claim, cross-claim, or affirmative defense.

Burdens of proof. The bill specifies that the party seeking recognition of a foreign-country judgment would have the burden of establishing that this chapter applied to the foreign-country judgment. It also specifies that the party resisting recognition of a foreign-country judgment would have the burden of proof when establishing grounds for non-recognition.

Applicability. The bill would apply to certain foreign-country judgments, defined as a judgment of a court of a foreign country. In defining "foreign country," the bill would exclude a government with respect to which the decision in Texas as to whether to recognize a judgment rendered by that government’s court was initially subject to determination under the full faith and credit clause of the U.S. Constitution (Sec. 1, Art. 4). The court judgments of such a government would not be subject to the act.

CSSB 944 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017, and would apply to actions commenced on or after that date.

SUPPORTERS SAY:

CSSB 944 would clarify current law, specify procedures, and establish burdens that are not clearly set, all to protect the fundamental rights of Texans.

Standards for recognition. The bill would expand the grounds on which a court could decline to recognize a foreign-country judgment to include a finding that the specific proceeding in the foreign court was not compatible with the requirements of due process. Current law has been interpreted by courts to merely relate to the general fairness of the system as a whole, not whether the specific matter was handled properly. Courts in this state should not be required to recognize decisions that violate the basic fundamental rights that Texans hold dear.

The broadness of one of the new standards is not a fault of the bill. In fact, increasing courts' discretion over proceedings would allow it more ability to evaluate the fairness and due process of a specific hearing, thus increasing the assurance UFCMJRA would provide in protecting the rights of Texans.

Applicability. CSHB 944 should not apply to currently pending matters, as it could set a precedent for defendants to pursue legislative action if they did not like the initial outcome of a case before the conclusion of the appeals process. None of the other 21 states that have updated the UFCMJRA apply the changes to pending litigation, and the Legislature should not be in the business of changing the outcomes of cases.

OPPONENTS SAY:

Standards for recognition. The bill would introduce vagueness, allowing non-recognition if there were "circumstances that raise substantial doubt about the integrity of the rendering court." This is a vague and unhelpful standard and would leave the question of recognition almost entirely to the court's discretion.

OTHER OPPONENTS SAY:

Applicability. As it is a clarification of existing law, CSSB 944 should apply to currently pending matters. Texas is uniquely situated in that one of its courts has chosen to recognize a foreign-country judgment without first finding that the specific defendant received due process of law. Instead, the court, contrary to all other cases that are pending or litigated, concluded that the judgment could be recognized because the foreign

country's system as a whole was not unfair. Because the fundamental right to due process is at risk, this bill, like many others previously enacted by the Legislature, should apply to currently pending matters.

NOTES:

CSSB 944 differs from the Senate-passed bill in that the committee substitute would apply only to actions commenced on or after the effective date. The committee substitute also would remove a provision that would allow a court to decline to recognize a foreign country judgment if it was established that the foreign country did not recognize judgments rendered in Texas that, but for the fact they were rendered in Texas, would constitute foreign-country judgments to which the law applied.

A companion bill, HB 2122 by Clardy, was approved by the House on May 9.

SUBJECT: Nonsubstantive recodification of statutes in various codes

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 12 ayes — Cook, Giddings, Craddick, Farrar, Guillen, K. King, Kuempel, Meyer, Oliveira, Paddie, E. Rodriguez, Smithee

0 nays

1 absent — Geren

SENATE VOTE: On final passage, April 19 — 31-0, on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 3502:*
For — (*Registered, but did not testify*: Thomas Parkinson)

Against — None

On — (*Registered, but did not testify*: Maria Breitschopf, Texas Legislative Council)

BACKGROUND: Government Code, sec. 323.007 requires the Texas Legislative Council to revise Texas statutes periodically to make them more accessible, understandable, and usable without altering their sense, meaning, or effect. As part of this process, the Legislative Council reorganizes the statutes in topical codes; eliminates repealed, invalid, duplicative, and other ineffective provisions; and improves the draftsmanship of the law.

DIGEST: SB 1488 would make nonsubstantive revisions to various codes by correcting references and terminology, conforming other laws to the codes, and codifying existing laws as new provisions in the codes. It would provide for appropriate disposition of various statutes that were omitted from enacted codes and renumber or otherwise redesignate duplicative titles, chapters, and sections of codes.

The repeal of a statute by the bill would not affect an amendment, revision, or reenactment of the statute by the 85th Legislature. If any

provision of the bill conflicted with a statute enacted by the 85th Legislature, the statute would control.

SB 1488 would adjust the following codes:

- Agriculture Code;
- Business and Commerce Code;
- Business Organizations Code;
- Civil Practice and Remedies Code;
- Code of Criminal Procedure;
- Education Code;
- Election Code;
- Family Code;
- Government Code;
- Health and Safety Code;
- Insurance Code;
- Labor Code;
- Local Government Code;
- Natural Resources Code;
- Occupations Code;
- Penal Code;
- Property Code;
- Tax Code;
- Transportation Code;
- Water Code; and
- disposition of certain civil statutes.

The bill would take effect September 1, 2017.

NOTES: A companion bill, HB 3502 by Landgraf, was left pending following a public hearing in the House State Affairs Committee on May 3.

SUBJECT: Authorizing judges to substitute numbers for names when polling jurors

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Smithee, Farrar, Gutierrez, Hernandez, Laubenberg, Murr, Neave, Rinaldi, Schofield

0 nays

SENATE VOTE: On final passage, March 1 — 31-0

WITNESSES: *On House companion bill, HB 1136:*
For — (*Registered, but did not testify:* Deece Eckstein, Travis County Commissioners Court; Darwin Hamilton)

Against — None

On — Margie Johnson, Office of Court Administration

BACKGROUND: Code of Criminal Procedure, art. 37.05 gives the state or the defendant in a case the right to poll the jury, which is done by calling separately the name of each juror and asking if the verdict is the juror's.

DIGEST: SB 46 would allow a judge to assign to each juror an identification number to be used instead of the juror's name when polling the jury.

The bill also would specify that the state and the defendant each had the right to poll the jury.

The bill would take effect September 1, 2017.

SUPPORTERS SAY: SB 46 would allow judges to protect jurors in cases where calling out their names in open court could pose a safety risk, particularly in controversial cases and violent crimes cases. The bill would codify many judges' current practice of using numbers instead of names to preserve jurors' anonymity when security concerns warrant it.

OPPONENTS SAY: No apparent opposition.

NOTES: A companion bill, HB 1136 by Y. Davis, was considered in a public hearing of the House Committee on Judiciary and Civil Jurisprudence on April 18 and left pending.

SUBJECT: Requiring study on employment for persons with intellectual disabilities

COMMITTEE: Human Services — favorable, without amendment

VOTE: 8 ayes — Raymond, Frank, Keough, Klick, Miller, Minjarez, Rose, Wu

1 nay — Swanson

SENATE VOTE: On final passage, April 25 — 31-0

WITNESSES: No public hearing

DIGEST: SB 2027 would require the Health and Human Services Commission (HHSC), with the Texas Workforce Commission (TWC), to conduct a study of occupational training programs available in Texas for individuals with intellectual disabilities. The study would determine the regions where training programs should be improved or expanded and determine strategies for placing trained individuals with intellectual disabilities into fulfilling jobs using existing or improved training programs.

HHSC would report the results of the study by December 1, 2018, to the governor, lieutenant governor, House speaker, and appropriate House and Senate committees.

The bill would take effect September 1, 2017.

SUPPORTERS SAY: SB 2027 would help individuals with intellectual disabilities broaden their job prospects by requiring the Health and Human Services Commission and the Texas Workforce Commission to research current training opportunities throughout the state. The study delivered to state officials just before the next legislative session would provide timely information and recommendations to lawmakers on policies to pursue in helping more of these individuals transition into fully integrated employment settings.

OPPONENTS SAY: Requiring the state to conduct another study would not be an efficient use of taxpayer money.

SUBJECT: Redistributing part of consolidated court cost for indigent defense services

COMMITTEE: Judiciary & Civil Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Smithee, Farrar, Gutierrez, Murr, Neave, Rinaldi, Schofield

0 nays

2 absent — Hernandez, Laubenberg

SENATE VOTE: On final passage, April 27 — 31-0

WITNESSES: *On companion bill, HB 3789:*
For — Jim Allison, County Judges and Commissioners Association of Texas; William Cox, El Paso County Public Defender's Office; Richard Evans, Texas Indigent Defense Commission, Bandera County; Robert Johnston, Anderson County; Vincent Perez, El Paso County; (*Registered, but did not testify:* Jennifer Allmon, The Texas Catholic Conference of Bishops; Mary Kate Bevel, Texas Criminal Justice Coalition; John Dahill, Texas Conference of Urban Counties; Joseph Green, Travis County Commissioners Court; Jose Landeros, El Paso County; Mark Mendez, Tarrant County; Mary Mergler, Texas Appleseed; Alexandra Peek, Austin Justice Coalition; Charles Reed, Dallas County Commissioners Court; Melissa Shannon, Bexar County Commissioners Court; Dee Simpson, Texas Rio Grande Legal Aid; Paul Sugg, Texas Association of Counties)

Against — None

On — Jim Bethke, Texas Indigent Defense Commission

BACKGROUND: Local Government Code, sec. 133.102 requires those convicted of criminal offenses to pay a court cost, in addition to all other costs, based on the type of crime. The costs are:

- $133 on conviction of a felony;
- $83 on conviction of a class A or class B misdemeanor; and
- $40 on conviction of a non-jailable misdemeanor offense, including

a criminal violation of a city ordinance, other than convictions relating to a pedestrian or parking a motor vehicle.

The costs are remitted to the comptroller. Sec. 133.102(e) requires the comptroller to allocate court costs to 14 accounts and funds in varying percentages. These include an allocation of 0.0088 percent for the general revenue dedicated abused children's counseling account no. 5011 and an allocation of 9.8218 percent for the general revenue dedicated comprehensive rehabilitation account no. 107. The general revenue dedicated fair defense account no. 5073 receives an allocation of 8.0143 percent. The fair defense account is used to fund operations of the Texas Indigent Defense Commission and the Office of Capital and Forensic Writs and for grants to counties for indigent defense services.

DIGEST:

SB 2053 would eliminate the allocation of the court costs collected upon criminal convictions that currently goes to the abused children's counseling fund and the comprehensive rehabilitation fund. References to these accounts would be removed from Local Government Code, sec. 133.102.

The bill would increase the amount of court costs going to the fair defense fund by the amounts that would have previously gone to the abused children's counseling fund and the comprehensive rehabilitation fund. This reallocation would increase the amount going to the fair defense account from 8.0143 percent of court costs to 17.8448 percent.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUPPORTERS SAY:

SB 2053 would respond to a 2017 court decision holding part of the collection and allocation of the consolidated court costs unconstitutional by redirecting those funds to a constitutional purpose that is in serious need of additional funding — the state's indigent defense system.

In March 2017, the Texas Court of Criminal Appeals ruled that the collection and allocation of part of the consolidated court costs for the abused children's counseling fund and the comprehensive rehabilitation

account does not meet the requirement that costs be expended for legitimate criminal justice purposes. The abused children's counseling fund was abolished by the Legislature in 1997, and revenue directed to the fund has been deposited in the general revenue fund with no requirement that it be used for criminal justice purposes. The uses of the comprehensive rehabilitation account do not relate to the criminal justice system, the court said, so allocations to the fund also do not meet requirements for the spending of the courts costs. The court said that if the Legislature redirected the funds to a legitimate criminal justice purpose, the existing court fee could continue to be collected.

SB 2053 would use the court ruling as an opportunity to reallocate portions of the court costs to the Texas Indigent Defense Commission, which would distribute the grants to counties to help carry out the Fair Defense Act. The act requires counties to meet certain standards and follow guidelines in appointing attorneys for criminal defendants who cannot afford to hire their own. Costs statewide for this constitutionally required duty grew from $91 million in 2001 to $248 million in 2016. Counties continue to shoulder the vast majority of this increase by paying about 88 percent of the costs with the state picking up about 12 percent.

Texas should prioritize the use of the available consolidated court costs for indigent defense. Counties deserve more help funding this duty, which they pay for through their strained local property tax systems. About half the U.S. states fully fund indigent defense services, and increased funding in Texas could help avoid the types of lawsuits recently brought in several states over inadequate indigent defense systems. A lawsuit in Texas and inadequate state support could risk the state's system being declared unconstitutional.

According to the fiscal note, SB 2053 would result in an increase of about $15 million per year to help pay for indigent defense costs. It would restore cuts of $5.3 million made in both the House and Senate versions of the fiscal 2018-19 budget and would provide additional support to counties to fund this important constitutional requirement.

OPPONENTS SAY:

Instead of the approach proposed in SB 2053, the Legislature may want to consider the allocation of the consolidated court cost fees in the context of

the state's general criminal justice and budget needs.

NOTES:

According to the Legislative Budget Board's fiscal note, the bill would result in an annual decrease of $14,000 to general revenue, representing funds from the abolished abused children's counseling fund that no longer would be deposited to general revenue. The fiscal note also estimates a gain for the fair defense account of $15.8 million in fiscal 2018 and a gain of $15.4 million annually after that. The comprehensive rehabilitation account would lose roughly the same amount during the same period.

The companion bill, HB 3739 by Murr, was reported favorably from the House Judiciary and Civil Jurisprudence Committee on April 18.

SUBJECT: Making revisions to the mental health program for veterans

COMMITTEE: Public Health — favorable, without amendment

VOTE: 9 ayes — Price, Sheffield, Arévalo, Coleman, Collier, Cortez, Guerra, Klick, Oliverson

0 nays

2 absent — Burkett, Zedler

SENATE VOTE: On final passage, March 28 — 31-0

WITNESSES: For — (*Registered, but did not testify*: Dennis Borel, Coalition of Texans with Disabilities; Eric Woomer, Federation of Texas Psychiatry; Gyl Switzer, Mental Health America of Texas; Sebastien Laroche, Methodist Healthcare Ministries of South Texas, Inc.; Greg Hansch, National Alliance on Mental Illness (NAMI) Texas; Albert Gest, Marita Rafael, and Judy Vanderheiden, Neuces County Medical Society; Jim Brennan, Texas Coalition of Veterans Organizations; Lee Johnson, Texas Council of Community Centers; Joel Ballew, Texas Health Resources; Sara Gonzalez, Texas Hospital Association; David White, Texas Psychological Association; Aidan Utzman, United Ways of Texas; Romana Harding; Bill Kelberlau; Aman Patel; David Vanderheiden)

Against — None

On — Tim Keesling, Texas Veterans Commission; (*Registered, but did not testify*: Trina Ita, Health and Human Services Commission)

BACKGROUND: Health and Safety Code, ch. 1001, subch. I establishes the mental health program for veterans. The program must provide certain services, including access to licensed mental health professionals for volunteer coordinators and peers, training approved by the Department of State Health Services (DSHS) for peers, and recruitment, retention, and screening of community-based therapists.

A volunteer coordinator is a person who recruits and retains veterans, peers, and volunteers to participate in the mental health program for veterans and related activities.

Government Code, ch. 434, subch. H requires the Texas Veterans Commission and DSHS to coordinate to administer the mental health program for veterans. For the program, the commission is required to recruit, train, and communicate with community-based therapists, community-based organizations, and faith-based organizations, among other services.

DIGEST:

SB 27 would require the Texas Veterans Commission and Department of State Health Services (DSHS) to identify, rather than recruit, community-based licensed mental health professionals, rather than therapists, for the mental health program for veterans. The commission also would have to identify, rather than recruit, community-based organizations and faith-based organizations.

The bill would replace "volunteer coordinator" with "peer service coordinator" in provisions that relate to the program in the Health and Safety and Government codes. A “peer service coordinator” would mean a person who recruited and retained veterans, peers, and volunteers to participate in the mental health program for veterans and related activities.

The program would have to include DSHS-approved training and technical assistance for peer service coordinators and licensed mental health professionals.

The bill would repeal provisions that established a grant program through which DSHS could award grants to regional and local organizations for the delivery of programs or services related to the program.

The bill would take effect September 1, 2017.

SUPPORTERS SAY:

SB 27 would increase access to essential mental health services and support to veterans. Currently, too few communities have dedicated professionals with the appropriate knowledge or licensure to provide mental health services to veterans. By providing for the addition and

training of community-based licensed mental health professionals, the bill would broaden who could provide services in the mental health program, allowing for clinical interventions for more Texas veterans and their families. By increasing access to preventive care the bill would reduce the number of veterans who seek more costly care in the emergency department of a hospital, decreasing the overall cost associated with military-related traumas.

OPPONENTS SAY:

No apparent opposition.